

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT DOUGLAS,

Plaintiff,

vs.

MICHAEL SMELOSKY, Warden; et al.,

Defendants.

CASE NO. 10 CV 1464 MMA (BGS)

**ORDER ADOPTING REPORT
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

[Doc. No. 14]

**GRANTING DEFENDANTS'
MOTION TO DISMISS**

[Doc. No. 9]

Plaintiff Robert Douglas, a state prisoner proceeding *pro se* and *in forma pauperis*, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to United States Magistrate Judge Bernard G. Skomal pursuant to 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.3. On November 30, 2010, Defendants Smelosky and Valenzuela filed a motion to dismiss Plaintiff's complaint. [Doc. No. 9.] Plaintiff filed an opposition to Defendants' motion on January 27, 2011. [Doc. No. 12.] On June 17, 2011, Judge Skomal filed a well-reasoned and thorough Report containing findings and conclusions, upon which he bases his recommendation that the Court grant Defendants' motion to dismiss. [Doc. No. 14.] On July 5, 2011, Plaintiff moved to extend the time to file objections to the Report. [Doc. No. 16.] Judge Skomal granted Plaintiff's request, and extended the deadline to file objections until August 15, 2011. [Doc. No. 17.] No objections were filed.

Where, as here, the case has been referred to the magistrate judge pursuant to 28 U.S.C. § 636, a district judge “may accept, reject, or modify the recommended disposition.” Fed. R. Civ. P. 72(b); see 28 U.S.C. § 636(b)(1). “[T]he court shall make a *de novo* determination of those portions of the [Report and Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). “The statute makes it clear that the district judge must review the magistrate judge’s findings and recommendations *de novo* if objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114,1121 (9th Cir. 2003) (en banc). “Neither the Constitution nor the statute requires a district judge to review, *de novo*, findings and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121. Accordingly, a district court is entitled to adopt a magistrate judge’s report and recommendation based on the lack of objections. Nonetheless, the Court has conducted a *de novo* review and agrees Defendants’ motion to dismiss should be granted.

CONCLUSION

Pursuant to 28 U.S.C. § 636(b)(1)(C), the undersigned has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds Judge Skomal’s Report and Recommendation to be supported by the record and based on a proper analysis. Accordingly, the Court **ADOPTS** the Report and Recommendation in its entirety and **GRANTS** Defendants’ Motion to Dismiss. **IT IS FURTHER ORDERED:**

- (i) Plaintiff’s claim for relief against Defendant Smelosky is **DISMISSED WITHOUT PREJUDICE**, and with leave to amend;
- (ii) Plaintiff’s claims for damages against all Defendants in their *official* capacities are **DISMISSED WITH PREJUDICE**, and without leave to amend.

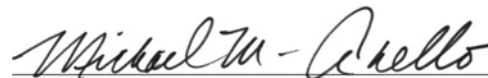
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1 (iii) If Plaintiff desires to amend his claim against Defendant Smelosky to remedy the
2 deficiencies identified in the Report, he must file an amended complaint within
3 **thirty (30) days**. If Plaintiff does not file an amended complaint within the time
4 permitted, the only claim that will proceed in this action is his claim against
5 Defendant Valenzuela in his *individual* capacity.¹

6 **IT IS SO ORDERED.**

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8 DATED: August 23, 2011



Hon. Michael M. Anello
United States District Judge

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¹ Defendant Walker has not been served.